IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

APPEAL (LODG.) NO.729 OF 2007
IN
NOTICE OF MOTION NO.2354 OF 2007
IN
SUIT NO.3221 OF 2007

Kailashprasad Agarwal
Indian Inhabitant,
residing / carrying on business from
Shops 107C, Sohni Mansion
Gowalia Tank, August Kranti Marg,
Mumbai 400 036. ..Appellant.

Vs.

1. Atul Dhirajlal Sohni
   Nitin Dhirajlal Sohni
   Both of Bombay, Indian Inhabitants,
   residing at Flat NO.5, Shubh Jeevan
   Co-operative Housing Society Ltd.,
   Saraswati Road, Santacruz (West),
   Bombay 400 054.

2. Babubhai Mohanlal Choksey
   of Bombay, Indian Inhabitant,
   residing at 131, Market Towers, 'K',
   Cuffe Parade, Bombay.

3. M.D. Choksey Construction Pvt. Ltd.
   a company registered under the
   Companies Act, having its registered
   office at Regent Chambers,
   ground floor, Nariman Point,
   Bombay 400 021.

4. Venus Builders (India) Pvt. Ltd.
   a partnership firm carrying on

business at 21C, 21A, Ambalal Doshi Marg, Ground floor, Raha Bahadur Mansion, Fort,
Bombay 400 023. ..Respondents.

and

Court Receiver,
High Court, Bombay. ..Respondent.

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Mr. D.S. Chandnani i/b M/s. Lexim Associates for the Appellant.
Mr. Anuj Narula i/b M/s. Jhangiani Narula Associates for the Respondents.
Mr. K.L. Vyas, Court Receiver present.

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CORAM : SWATANTER KUMAR, C.J. &
DR. D.Y. CHANDRACHUD, J.

Order reserved on 18th September, 2007.
Order pronounced on 29th September, 2007.

ORDER (Per Dr. D.Y. Chandrachud, J.)

1. The Appeal arises out of an order passed by the Learned Single Judge on 17th August, 2007.

2. Having heard the learned counsel appearing for the parties, we are of the view that the Learned Single Judge was entirely justified in coming to the conclusion that entirely frivolous proceedings have been resorted to by a person against whom adverse orders have been passed on more than one occasion right

upto the Supreme Court. In paragraphs 3 and 4 of the order dated 17th June, 2000 passed by Mr. Justice S.H. Kapadia (as His Lordship then was) the following observations were made on the report of the Court Receiver :

> "3. Claim made by Shri Agarwal for tenancy
>
> This claim has a checkered history. It is not necessary for this Court to go into the various proceedings adopted by Shri Agarwal in this Court. However, till date he has not been able to prove even prima facie, his alleged lawful possession prior to 14th June, 1985 (when Court Receiver took possession) except to the extent of two galas which he is allowed to retain by various orders passed by this Court from time to time. By various orders passed by the court, his claim has been confined only to two galas. However, he was given liberty to file suits in the Small Causes Court being R. A. D. Suit No.155/2000 to 157 of 2000 claiming areas in addition to the said two galas. However, till today, Shri Agarwal has failed to seek interim relief in the said suits.
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> 4. The Question on the report, which arises for determination is : whether the possession of the premises, apart from the two galas allegedly encroached upon by Shri Agarwal after 14th June 1985, are required to be handed back to the second defendant herein. For the purpose of this report, it may be mentioned that the main dispute which remains in this High Court suit is whether defendant No.2 was entitled to act under the Power of Attorney executed by defendant No.1 in favour of Defendant No.2 which has been revoked. By various interim orders, defendant No.2 has been permitted to do so except to the extent that defendant No.2 will not alienate the properties pending the suit (See Order dated 30th April 1998 passed by the Division Bench), Therefore

> this Court is of the view that since Shri Agarwal has already instituted the three suits in the Small Couses Court, it would not be proper for this Court to express any opinion either way. However, he is directed to make interim application to the Small Causes Court in the pending suits within 15 days from today. On the said applications being made within 15 days, the Defendants in the suits shall file their reply within one (a) week from service and the Small Causes Court shall hear and decide the said application within either (8) weeks from completion of the pleadings in the interim application. Till the decision of the Small Causes Court in the interim applications, the Receiver shall not hand back the possession to defendant No.2. However, if such an application is not made by Shri Agarwal in the pending suits or in case if Shri Agarwal fails to get interim reliefs in the pending suits. Then the Receiver is directed to hand back possession of the suit property to the 2nd Defendant in the state in which it existed as mentioned in the report of the court receiver dated 14th /18th June, 1985."

In pursuance of the liberty which was granted to the Appellant he had moved the Small Causes Court. The Appellant failed before the Trial Court as well as before the Appellate Bench. Once again on 10th June, 2005 an order was passed by a Learned Single Judge of this Court, S.J. Vazifdar, J., by which the Court Receiver was directed to comply with the order dated 17th June, 2000 by handing over possession of the property in the state in which it existed as mentioned in the report of the Court Receiver dated 14/18th June, 1985. The matter was carried in appeal which

was dismissed on 20th July, 2005. A Special Leave Petition was dismissed by the Supreme Court on 2nd September, 2005. Having regard to the aforesaid background, we are of the view that the Appeal is entirely lacking any substance. The Appeal shall accordingly stand dismissed.

CHIEF JUSTICE

DR. D. Y. CHANDRACHUD, J.

...6/-

On oral request made by the learned Counsel appearing for the Appellant, the operation of the judgment shall be stayed for a period of two weeks as there was an interim order in favour of the Appellant before the Learned Single Judge as well as during the pendency of this Appeal by this Court. However, this protection shall automatically end and will not be extended beyond the period of two weeks.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.